

JUL 16 2007

Atty. Dkt. No. 02CR146/KE (047141-0294)

**REMARKS**

Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow. Claims 1-3, and 5-22 have been rejected by the Examiner. Claims 1, 8, and 16 have been amended, and no new matter has been added. Claims 5 and 6 have been cancelled. Accordingly, Claims 1-3, and 7-22 will be pending in the present Application upon entry of this Reply and Amendment.

A detailed listing of all claims that are, or were, in the Application, irrespective of whether the claim(s) remain under examination in the Application, is presented, with an appropriate defined status identifier.

For simplicity and clarity purposes in responding to the Office Action, Applicants' remarks are primarily focused on the rejections of the independent claims (i.e., Claims 1, 8 and 16) outlined in the Office Action, with the understanding that the dependent claims that depend from the independent claims are patentable for at least the same reasons (and in most cases other reasons) that the independent claims are patentable. Applicants expressly reserve the right to argue the patentability of the dependent claims separately in any future proceedings.

***Independent Claims 1, 8, and 16***

On page 2 of the Office Action, Claims 1-3 and 7-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. No. 2003/0198206 to Cain et. al. ("Cain") in view of U.S. Patent Appl. No. 2004/0203820 to Billhartz ("Billhartz") and further in view of U.S. Patent Appl. No. 2002/0049039 to Natarajan ("Natarajan"). Applicants respectfully submit that these rejections should be withdrawn, because the cited references fail to disclose, teach, or suggest the subject matter of Claims 1-3 and 7-22.

The Office Action stated:

The combination of Cain fails to teach 'congestion metric information is base on comparing cell counts against a total capacity of each link'.

Atty. Dkt. No. 02CR146/KE (047141-0294)

The Office Action further stated:

Natarajan teaches the monitoring of traffic demand conditions and determining a least utilized base station for servicing a channel request by a subscriber unit, see (Par. 0008).

Claims 1, 8, and 16 are in independent form and recite “wherein the congestion metric information is based on comparing cell counts against a total capacity of each link; a monitoring signal of a processor buffer availability; and a monitoring signal of priority queues capacity.”

As stated by the Examiner on page 3 of the Office Action, “[t]he combination of Cain [with Billhartz] fails to teach ‘congestion metric information is base on comparing cell counts against a total capacity of each link’.”

Natarajan does not appear to disclose comparing cell counts against a total capacity of each link; a monitoring signal of a processor buffer availability; and a monitoring signal of priority queues capacity. In the paragraph cited in the Office Action, Natarajan discloses “determin[ing] in step 114 what base station is the least utilized.” (Natarajan, para. [0023]). In Natarajan, there is no mention of utilizing a monitoring signal of a processor buffer availability. Natarajan does not appear to disclose, teach or suggest comparing cell counts against a total capacity of each link; a monitoring signal of a processor buffer availability; and a monitoring signal of priority queues capacity.

The Examiner has cited to no teaching in the prior art of a system that includes a “congestion metric information” that “is based on comparing cell counts against a total capacity of each link; a monitoring signal of a processor buffer availability; and a monitoring signal of priority queues capacity.” The only evidence in the record of a teaching of such a feature is contained in the present Application. Of course, any reliance on the present Application would constitute impermissible hindsight reasoning

Applicants respectfully request withdrawal of the rejection of Claims 1, 8, and 16 since Cain in combination with Billhartz and/or Natarajan does not disclose, teach or suggest “wherein

Atty. Dkt. No. 02CR146/KE (047141-0294)

the congestion metric information is based on comparing cell counts against a total capacity of each link; a monitoring signal of a processor buffer availability; and a monitoring signal of priority queues capacity," as required by Claims 1, 8, and 16.

Claims 2-3, 7, 9-15, and 17-22 depend variously from Claims 1, 8, and 16 and are allowable therewith, for at least the reasons set forth above, without regard to the further patentable limitations set forth in such claims. Reconsideration and withdrawal of the rejection of Claims 1-3 and 7-22 is respectfully requested.

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Applicants believe that the present Application is now in condition for allowance. Favorable reconsideration of the Application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present Application.

Further, Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present Application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent Application and/or any patents or patent applications to which priority is claimed by this patent Application.

Atty. Dkt. No. 02CR146/KE (047141-0294)

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 18-1722. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 18-1722.

Respectfully submitted,

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By Kyle Eppele

ROCKWELL COLLINS, INC.  
400 Collins Road, NE  
Cedar Rapids, IA 52498  
Telephone: (319) 295-8280  
Facsimile: (319) 295-8777  
Customer No. 26383

Kyle Eppele  
Attorney for Applicants  
Registration No. 34,155